



## City of Biggs

### Agenda Item Staff Report for the Regular City Council Meeting: August 16, 2010 6:00PM

DATE: August 12, 2010

TO: Honorable Mayor and Members of the City Council

FROM: Pete Carr, City Administrator

SUBJECT: Professional Services Agreement for Greenhouse Gas (GHG)  
Verification Services (Action)

City Administrator will recommend approval of NCPA member partnership agreement for cost-effective compliance with State-mandated GHG reporting requirements.

#### **Background**

This contract is for GHG verification services for 2009-2011. The agreement has been vetted through our City Attorney and NCPA general counsel's office, Meyers Nave.

In terms of compensation to the contractor, the contract is designed to have \$40,000 divided equally across the eight members, with \$2,000 billed in 2010 and \$1,500 in both 2011 and 2012.

NCPA added another \$10,000 to the contract (but undesignated to any particular member) just in case additional work was needed to be performed by the vendor, such as a specific site visit to a member location. That amount, however, would be billed directly to the member that may need that service. Our expectation would be that no member will need to use those funds, however, and therefore members would never be billed for this amount.

In essence, Biggs' share, barring any additional site visits specific to Biggs by the vendor, would be \$5,000 for the three years. In terms of a comparative, NCPA estimates that such a review individually would be approximately \$5,000-10,000 for each year.

Agreement attached.

#### **Recommendation**

Approve agreement as proposed.

#### **Fiscal Impact**

\$5000 over three years, \$2000 this year.



**PROFESSIONAL SERVICES AGREEMENT BETWEEN  
NORTHERN CALIFORNIA POWER AGENCY  
AND THE CITIES OF ALAMEDA, BIGGS, GRIDLEY, HEALDSBURG, LODI,  
LOMPOC, UKIAH, AND THE PORT OF OAKLAND**

This Professional Services Agreement ("Agreement") is made by and between the NORTHERN CALIFORNIA POWER AGENCY ("NCPA"), a joint public powers agency with offices located at 651 Commerce Drive, Roseville, California, and the cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Ukiah, and the Port of Oakland (such members each being a "Contracting Member" and jointly referred to as "Contracting Members"). NCPA and the Contracting Members are together sometimes referred to herein individually as a "Party" and collectively as "the Parties").

The Agreement is made as of \_\_\_\_\_, 2010 (the "Effective Date") in Roseville, California.

**Section 1. RECITALS**

This Agreement is entered into based on the following facts, among others:

1.1 NCPA is a public agency created by a joint powers agreement established under California law for the purpose of assisting its members in the efficient use of their common powers.

1.2 Contracting Members are engaged in, among other things, transmitting and distributing electric power within their respective cooperative limits. Contracting Members are also each a member of NCPA. Contracting Members jointly desire that NCPA provide Contracting Members with the Services described in this Agreement.

1.3 Article III, section 3 of the "Amended and Restated Northern California Power Agency Joint Powers Agreement" (as amended and effective January 1, 2008) (hereinafter "JPA") entitled "Powers and Functions" provides that none of the debts, liabilities or obligations of NCPA shall be the debts, liabilities or obligations of any of the members of NCPA unless assumed in a particular case by resolution of the governing body of the member to be charged." Notwithstanding the foregoing, Article V, section 1 of the JPA entitled "General Provisions" provides that "[t]he governing Commission of NCPA is authorized to procure public liability and other insurance as it deems advisable to protect NCPA and each of the parties hereto, charging the cost thereof to the operating costs of NCPA."

1.4 Contracting Members desire to secure NCPA's Services under this Agreement in a manner that balances its interests and the interests of other NCPA members with the ongoing financial viability and professional responsibilities of NCPA. Accordingly, Contracting Members desire to secure NCPA's Services under this Agreement by accepting a limited insurance based recourse against NCPA, with the option of procuring additional insurance at Contracting Members' sole expense, thereby insuring that NCPA will substantially limit its risk for the provision of such

Services which, in turn, allocates risks back to the Contracting Members in the event NCPA is not adequately insured.

**NOW THEREFORE**, in consideration of the mutual covenants and promises set forth, NCPA and Contracting Members agree as follows:

## **Section 2. DEFINITIONS**

Whenever used in this Agreement with initial capitalization, these terms shall have the following meanings as applicable, whether in the singular or plural:

2.1 "Good Utility Practice" shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result of the lowest reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region and consistently adhered to by the electric utility industry.

2.2 "NCPA Members" shall mean the signatories to the JPA or those agencies which have executed an Associate Member Agreement with NCPA.

2.3 "Stranded Costs" shall mean all costs incurred by NCPA in providing Services to Contracting Members under this Agreement that could not reasonably be avoided by NCPA from the date it receives a written Notice of Termination. Such costs may include, but not be limited to, salary and employment costs, rent, utilities, or contracts incurred to provide Services under this Agreement.

## **Section 3. SERVICES TO BE PROVIDED; AUTHORIZED REPRESENTATIVES; STANDARD OF PERFORMANCE**

3.1 This Agreement is entered into by the Parties in order for NCPA to provide services to Contracting Members as described in Exhibit A hereto ("Services").

3.2 The following are the Authorized Representatives of the parties for contract administration purposes under this Agreement:

Jane Dunn Cirrincione  
Assistant General Manager  
Legislative & Regulatory Affairs  
Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678  
(916) 781-4203  
(916) 782-2191 FAX  
[jane.cirrincione@ncpa.com](mailto:jane.cirrincione@ncpa.com)

Brad Wetstone  
Alameda Municipal Power  
2000 Grand Street  
PO Box H  
Alameda, CA 94501  
(510) 814-6412  
(510) 814-5699 FAX  
[Wetstone@alamedamp.com](mailto:Wetstone@alamedamp.com)

Pete Carr  
City of Biggs  
465 C Street  
PO Box 307  
Biggs, CA 95917  
(530) 868-5493  
(530) 868-5239 FAX  
[Biggs1@biggs-ca.gov](mailto:Biggs1@biggs-ca.gov)

Rob Hickey  
City of Gridley  
685 Kentucky Street  
Gridley, CA 95948  
(530) 846-5695  
(530) 846-3229 FAX  
[rhipkey@gridley.ca.us](mailto:rhipkey@gridley.ca.us)

Basil Wong  
Port of Oakland  
530 Water Street  
Oakland, CA 94607  
(510) 627-1509  
(510) 763-8287 FAX  
[bwong@portoakland.com](mailto:bwong@portoakland.com)

Mel Grandi  
City of Ukiah  
300 Seminary Street  
Ukiah, CA 95482  
(707) 463-6295  
(707) 463-6740 FAX  
[mgrandi@cityofukiah.com](mailto:mgrandi@cityofukiah.com)

Tim Conn  
City of Healdsburg  
401 Grove Street  
Healdsburg, CA 95448  
(707) 431-3346  
(707) 431-3321 FAX  
[tconn@ci.healdsburg.ca.gov](mailto:tconn@ci.healdsburg.ca.gov)

Kevin Bell  
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221 W. Pine Street  
PO Box 3006  
Lodi, CA 95240  
(209) 333-6800, ext. 2050  
[kbell@lodi.gov](mailto:kbell@lodi.gov)

Marty Hostler  
City of Lompoc  
8001 Civic Center Plaza  
PO Box 8001  
Lompoc, CA 93436  
(805) 875-8296  
(805) 875-8396 FAX  
[M\\_hostler@ci.lompoc.ca.us](mailto:M_hostler@ci.lompoc.ca.us)

No Authorized Representative is authorized to amend any provision of this Agreement except in accordance with Section 12.16.

3.3 Standard of Performance. NCPA shall perform all Services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which NCPA is engaged in the geographical area in which NCPA practices its profession. NCPA shall prepare all work products required by this Agreement in a professional manner and shall conform to the standards of quality normally observed by a person practicing in NCPA'S profession.

3.4 Assignment of Personnel. NCPA shall assign only competent personnel to perform Services pursuant to this Agreement. In the event that Contracting Members, in their sole discretion, at any time during the term of this Agreement, desire the reassignment of any such persons, NCPA shall, immediately upon receiving notice from Contracting Member of such desire of Contracting Member, reassign such person or persons.

3.5 Time. NCPA shall devote such time to the performance of Services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 3.3, above and to satisfy NCPA's obligations hereunder.

#### **Section 4. TERM AND TERMINATION**

4.1 Authorization to Perform Services. NCPA is not authorized to perform any initial Services or incur any costs whatsoever under the terms of this Agreement until its receipt of a written applicable authorization from Contracting Members' general manager, utility director or the Contracting Member's equivalent confirming Contracting Members' authority to enter into this Agreement and confirming that the Contracting Members have allocated funds for and approved contract payments to NCPA under this Agreement.

4.2 Term. The term of this Agreement shall begin on the Effective Date and shall end on December 31, 2012.

4.3 Early Termination and Stranded Costs. This Agreement may be terminated by either party, upon 30 days written notice to all Parties ("Notice of Termination"). To be effective, the Notice of Termination must be executed by each Contracting Member.

In the event of an early termination, Contracting Members shall pay NCPA for all fees and costs required under this Agreement through the effective date of its Notice of Termination plus all Stranded Costs. Upon payment of the above amounts, neither Party shall have any further obligations under this Agreement except as otherwise set forth in Section 5.7 regarding the survival of defense and indemnity obligations.

#### **Section 5. INDEMNITY AND INSURANCE**

##### **5.1 Limitation of NCPA's Liability.**

5.1.1 Except as provided in this section 5.1, NCPA shall not at any time be liable for any injury or damage occurring to Contracting Members or any other person or property from any cause whatsoever arising out of this Agreement.

5.1.2 The provisions of section 5.1.1 shall not apply where the injury or damage occurring to Contracting Members is caused by the negligence or willful misconduct of NCPA or of any employee, agent or contractor of NCPA, and provided that any liability under this subsection is limited to the extent of the actual coverage and coverage limits of the insurance policies described in this Section 5.

5.1.3 Notwithstanding Section 5.1.2 above, the Contracting Members agree to reimburse NCPA, in a timely manner, for all deductibles and/or self-insured retentions payable for any claim, liability or damage arising out of this Agreement.

5.2 Indemnification of NCPA. Except as specified in Section 5.1.2 above, Contracting Members shall, at their sole cost and expense, indemnify and hold harmless NCPA and all associated, affiliated, allied, member and subsidiary entities of NCPA, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees arising out of this Agreement.

5.3 Defense of Indemnitees. In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Contracting Members shall, upon reasonable prior written notice from any of the Indemnitees, at Contracting Members' sole cost and expense, resist and defend the same with legal counsel mutually selected by Indemnitee and the Contracting Members, unless mutual selection of counsel is expressly prohibited by an applicable insurance policy; provided however, that neither Indemnitee nor Contracting Members shall admit liability in any such matter or on behalf of the other without express written consent, which consent shall not be unreasonably withheld or delayed, nor enter into any compromise or settlement of any claim for which Indemnitees are indemnified hereunder without prior express written consent. The Contracting Members' duty to defend shall begin upon receipt of a written notice identifying with specificity the allegations that give rise to this duty to defend.

5.4 Notice. The Parties shall give each other prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this Section 5.

5.5 Insurance. During the term of the Agreement and prior to beginning any work under this Agreement, NCPA shall maintain, or cause to be maintained, in full force and effect, and at its sole cost and expense, the types and limits of liability insurance as are annually approved by the governing Commission of NCPA. The types and limits of liability insurance that are applicable to this Agreement are evidenced in policy summaries, which are attached hereto as Exhibit C. NCPA warrants and represents that the types of liability insurance and coverage limits shown in Exhibit C are in full force and effect and shall remain so during the term of this Agreement unless NCPA gives prior written notification (of not less than 30 days) of modification, cancellation or rescission of such coverage.

5.6 Contracting Members' Acknowledgment of Option to Secure Additional Insurance. The Contracting Members acknowledge that there are limitations on NCPA's liability to the Contracting Members under this Section 5 and that the Contracting Members may need to purchase additional insurance of their own to cover the additional risks and the potential additional liabilities it is assuming under this Agreement. Contracting Members agree that it will cause, with respect to any additional insurance it obtains or which is otherwise available to Contracting

Members, its insurers to issue an endorsement providing a waiver of subrogation rights as to Indemnitees.

5.7 Survival of Obligations. The defense and indemnity obligations of Section 5 shall survive the termination of this Agreement.

## **Section 6. COMPENSATION, CHARGES & RESERVES**

6.1 Contracting Members hereby agree to pay NCPA an amount NOT TO EXCEED Fifty Thousand Dollars (\$50,000.00) for the Services set forth in Exhibit A, pursuant to NCPA'S fee schedule which is attached hereto and incorporated herein as Exhibit B, and all reimbursable expenses incurred in performing the work. In the event of a conflict between this Agreement and NCPA'S proposal regarding the amount of compensation, this Agreement shall prevail. Contracting Members shall pay NCPA for Services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from Contracting Members to NCPA for Services rendered pursuant to this Agreement. NCPA shall submit all invoices to Contracting Members in the manner specified herein. Except as specifically authorized by Contracting Members, NCPA shall not bill Contracting Members for duplicate services performed by more than one person.

NCPA and Contracting Members acknowledge and agree that compensation paid by Contracting Members to NCPA under this Agreement is based upon NCPA'S estimated costs of providing the Services required hereunder, including salaries and benefits of employees and subcontractors of NCPA, if any. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which NCPA and its employees, agents, and subcontractors may be eligible. Contracting Members therefore have no responsibility for such contributions beyond compensation required under this Agreement.

## **Section 7. BILLING AND PAYMENT**

7.1 Invoices. NCPA shall submit invoices during the term of this Agreement, based on the cost for Services performed and reimbursable costs incurred prior to the invoice date.

7.2 Annual Payment. Contracting Members shall make one annual payment, based on the invoice received, for Services satisfactorily performed, and for authorized reimbursable costs incurred. Contracting Members shall have thirty (30) days from the date of the invoice to pay NCPA.

Payments shall be remitted directly to:

Northern California Power Agency  
651 Commerce Drive  
Roseville, California 95678  
Attn: Accounts Receivable

7.3 Total Payment. Contracting Members shall pay for the services to be rendered by NCPA pursuant to this Agreement. Contracting Members shall not pay any additional sum for any expense or cost whatsoever incurred by NCPA in rendering Services pursuant to this Agreement. Contracting Members shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall NCPA submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment in accordance with this Agreement..

7.4 Hourly Fees. Fees for work performed by NCPA on an hourly basis shall not exceed the amounts shown on the following fee schedule attached hereto as Exhibit B.

7.5 Reimbursable Expenses. Reimbursable expenses are specified in Exhibit B. Expenses not listed in Exhibit B are not chargeable to Contracting Members. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

7.6 Payment of Taxes. NCPA is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

7.7 Payment upon Termination. In the event that Contracting Members or NCPA terminates this Agreement pursuant to Section 4, Contracting Members shall compensate the NCPA for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. NCPA shall maintain adequate logs and timesheets in order to verify costs incurred to that date.

7.9 Authorization to Perform Services. NCPA is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from each Contracting Member's Contract Authorized Representative following receipt of the required approvals under the terms of this Agreement.

## **Section 8. STATUS OF NCPA; FACILITIES AND EQUIPMENT**

8.1 Independent Contractor. At all times during the term of this Agreement, NCPA shall be an independent contractor and shall not be an employee of Contracting Members. Contracting Members shall have the right to control NCPA only insofar as the results of NCPA'S Services rendered pursuant to this Agreement and assignment of personnel pursuant to Section 3.4; however, otherwise Contracting Members shall not have the right to control the means by which NCPA accomplishes Services rendered pursuant to this Agreement. Notwithstanding any other agency, state, local or federal policy, rule, regulation, law, or ordinance to the contrary, NCPA and any of its employees, agents, and subcontractors providing Services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Contracting Members, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of Contracting Members and entitlement to any contribution to be paid by Contracting

Members for employer contributions and/or employee contributions for PERS benefits.

8.2 Facilities and Equipment. The facilities and equipment that may be necessary to perform the Services required by this Agreement shall be provided as follows: None.

## **Section 9. LEGAL REQUIREMENTS**

9.1 Governing Law. The laws of the State of California shall govern this Agreement, without regard for the choice of law doctrine.

9.2 Compliance with Applicable Laws. NCPA and any subcontractors shall comply with all laws applicable to the performance of the Services hereunder.

9.3 Other Governmental Regulations. To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, NCPA and any subcontractors shall comply with all applicable rules and regulations to which Contracting Members are bound by the terms of such fiscal assistance program.

9.4 Licenses and Permits. NCPA represents and warrants to Contracting Members that NCPA and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that is legally required to practice their respective professions. NCPA represents and warrants to Contracting Members that NCPA and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions.

9.5 Nondiscrimination and Equal Opportunity. NCPA shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by NCPA under this Agreement. NCPA shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of NCPA thereby.

NCPA shall include the provisions of this Subsection in any subcontract approved by each Contracting Member's Contract Administrator or this Agreement.

## **Section 10. KEEPING AND STATUS OF RECORDS.**

10.1 Records Created as Part of NCPA's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that NCPA prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Contracting Members. NCPA hereby agrees to deliver those documents to the Contracting Members upon termination of the Agreement. It is understood and agreed that the documents and

other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the Contracting Members and are not necessarily suitable for any future or other use. Contracting Members and NCPA agree that, until final approval by Contracting Members, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties, except as may otherwise be required by applicable law.

10.2 NCPA's Books and Records. NCPA shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for Services or expenditures and disbursements charged to the Contracting Members under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the NCPA to this Agreement.

10.3 Inspection and Audit of Records. Any records or documents that Section 12.2 of this Agreement requires NCPA to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Contracting Members. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Contracting Members or as part of any audit of the Contracting Members, for a period of three (3) years after final payment under the Agreement.

10.4 Confidential Information and Disclosure. During the term of this Agreement, either party ("Disclosing Party") may disclose confidential, proprietary or trade secret information (the "Information"), to the other party ("Receiving Party"). All such Information made available in a tangible medium of expression (such as, without limitation, on paper or by means of magnetic tapes, magnetic disks or other computer media) shall be marked in a prominent location to indicate that it is the confidential, proprietary and trade secret information of Disclosing Party at the time of disclosure to Receiving Party. Receiving Party shall hold Disclosing Party's Information in confidence and shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Information. Receiving Party shall not attempt to reverse engineer or in any manner create any product or information which is similar in appearance to or based on the Information provided by Disclosing Party. Receiving Party shall not disclose Disclosing Party's Information to any person other than Receiving Party's employees, agents, contractors and subcontractors who have a need to know in connection with this Agreement.

Receiving Party's confidentiality obligations hereunder shall not apply to any portion of Disclosing Party's Information which:

- (a) Has become a matter of public knowledge other than through an act or omission of Receiving Party;
- (b) Has been made known to Receiving Party by a third party in accordance with such third party's legal rights without any restriction on disclosure;
- (c) Was in the possession of Receiving Party prior to the disclosure of such Information by Disclosing Party and was not acquired directly or indirectly from the other party or any person or entity in a relationship of trust and confidence with the other party with respect to such Information;

- (d) Receiving Party is required by law to disclose; or
- (e) Has been independently developed by Receiving Party from information not defined as "Information" in this Agreement, as evidenced by Receiving Party's written records.

Receiving Party shall return or destroy Disclosing Party's Information (including all copies thereof) to Disclosing Party promptly upon the earliest of any termination of this Agreement or the Disclosing Party's written request. Notwithstanding the foregoing, Receiving Party may retain one copy of such Information solely for archival purposes, subject to the confidentiality provisions of this Agreement. The parties understand that each party is a public entity and is subject to the laws that may compel either to disclose information about the other's business.

## **Section 11. MISCELLANEOUS PROVISIONS**

11.1 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that Party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

11.2 Venue. In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Placer or in the United States District Court for the Eastern District of California.

11.3 Severability. If any provision of this Agreement shall be determined by a court of competent jurisdiction to be invalid, void or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable by federal or state statute or regulation, but the remaining portions of the Agreement can be enforced without failure of material consideration to any Party, then the remaining provisions shall continue in full force and effect. To that end, this Agreement is declared to be severable. Provided, however, that in the event any provision is declared to be invalid, void or unenforceable, either Party may terminate this Agreement upon ten (10) days written notice given within five (5) days of receipt of notice of final entry of judgment.

11.4 No Implied Waiver of Breach. The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

11.5 Successors and Assigns. The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

11.6 Use of Recycled Products. NCPA shall endeavor to prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

11.7 Conflict of Interest. NCPA shall not employ any Contracting Members' official or employee in the work performed pursuant to this Agreement. No officer or employee of Contracting Members shall have any financial interest in this Agreement that would violate

California Government Code Sections 1090 *et seq.*

11.8 Notices. Unless this Agreement requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made shall become effective when delivered in person, or sent by registered or certified first class mail, to the persons specified below:

To NCPA:

Jane Dunn Cirincione  
Assistant General Manager  
Legislative & Regulatory Affairs  
Northern California Power Agency  
651 Commerce Drive  
Roseville, CA 95678

With a copy to:

Michael F. Dean  
General Counsel, Northern  
California Power Agency  
c/o Meyers Nave  
555 Capitol Mall, Suite 1200  
Sacramento, CA 95814

To Contract Members:

Brad Wetstone  
Alameda Municipal Power  
2000 Grand Street  
PO Box H  
Alameda, CA 94501  
(510) 814-6412  
(510) 814-5699 FAX  
[Wetstone@alamedamp.com](mailto:Wetstone@alamedamp.com)

Pete Carr  
City of Biggs  
465 C Street  
PO Box 307  
Biggs, CA 95917  
(530) 868-5493  
(530) 868-5239 FAX  
[Biggs1@biggs-ca.gov](mailto:Biggs1@biggs-ca.gov)

Rob Hickey  
City of Gridley  
685 Kentucky Street  
Gridley, CA 95948  
(530) 846-5695  
(530) 846-3229 FAX  
[rhickey@gridley.ca.us](mailto:rhickey@gridley.ca.us)

Tim Conn  
City of Healdsburg  
401 Grove Street  
Healdsburg, CA 95448  
(707) 431-3346  
(707) 431-3321 FAX  
[tconn@ci.healdsburg.ca.gov](mailto:tconn@ci.healdsburg.ca.gov)

Kevin Bell  
City of Lodi  
221 W. Pine Street  
PO Box 3006  
Lodi, CA 95240  
(209) 333-6800, ext. 2050  
[kbell@lodi.gov](mailto:kbell@lodi.gov)

Marty Hostler  
City of Lompoc  
8001 Civic Center Plaza  
PO Box 8001  
Lompoc, CA 93436  
(805) 875-8296  
(805) 875-8396 FAX  
[M\\_hostler@ci.lompoc.ca.us](mailto:M_hostler@ci.lompoc.ca.us)

Basil Wong  
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Oakland, CA 94607  
(510) 627-1509  
(510) 763-8287 FAX  
[bwong@portoakland.com](mailto:bwong@portoakland.com)

Mel Grandi  
City of Ukiah  
300 Seminary Street  
Ukiah, CA 95482  
(707) 463-6295  
(707) 463-6740 FAX  
[mgrandi@cityofukiah.com](mailto:mgrandi@cityofukiah.com)

Whenever it is required, permitted, or desired in this Agreement that written notice or demand be given by any Party to any other Party, such notice or demand may be either personally served or sent by United States Mail, or facsimile. Notice shall be deemed to have been given when personally served, when deposited in the United States Mail, certified or registered with postage prepaid and properly addressed, or when transmitted by facsimile provided however, notices delivered by facsimile shall only be effective if delivered during regular business hours on a day that is considered a regular business day for NCPA by the involved Parties.

11.9 Integration; Incorporation. This Agreement, including all the Exhibits attached hereto, represents the entire and integrated agreement between Contracting Members and NCPA relating to the subject matter of this Agreement, and supersedes all prior negotiations, representations, or agreements, either written or oral. All Exhibits attached hereto are incorporated by reference herein.

11.10 Dispute Resolution. If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, Contracting Members and NCPA agree to resolve the dispute in accordance with the following:

11.10.1 Each Party shall designate a senior management or executive level representative to negotiate any dispute;

11.10.2 The representatives shall attempt, through good faith negotiations, to resolve the dispute by any means within their authority.

11.10.3 If the issue remains unresolved after ONE HUNDRED AND TWENTY (120) days of good faith negotiations, despite having used their best efforts to do so, either Party may pursue whatever other remedies may be available to it.

11.10.4 This informal resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code § 900, *et seq.*

11.11 Other Agreements. This Agreement is not intended to modify or change any other agreement between any of the Parties, individually or collectively.

11.12 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

11.13 Obligations of Contracting Members Joint and Several: No Joint Venture. The duties, obligations and liabilities of the Contract Members, including the obligations to make payments to NCPA, are intended to be joint and several. Provided that nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability on or with regard to the Contracting Members.

11.14 Effect of Section Headings. Section headings and subheadings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretation of text.

11.15 Authority of Signatories. The signatories hereby represent that they have been appropriately authorized to execute this Agreement on behalf of the Party for whom they sign.

11.16 Amendments. The Parties may amend this Agreement only by a writing signed by all the Parties following each Party's receipt of written authorization, as described in Section 4.1 above, which authorization shall be condition precedents to any amendments of this Agreement and shall be attached as exhibits to this Agreement.

The Parties have executed this Agreement as of the Effective Date.

Northern California Power Agency

\_\_\_\_\_  
JAMES H. POPE, General Manager

Attest:

\_\_\_\_\_  
Assistant Secretary of the Commission

Approved as to Form:

  
\_\_\_\_\_  
Rachel M. Feiertag  
For General Counsel

**CONTRACTING MEMBERS:**

*Each member will have a separate signature page due to diverse internal contract processes.*

**CITY OF ALAMEDA**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY OF BIGGS**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY OF GRIDLEY**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY OF HEALDSBURG**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY OF LODI**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY OF LOMPOC**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY OF UKIAH**

By: \_\_\_\_\_

Its: \_\_\_\_\_

**PORT OF OAKLAND**

By: \_\_\_\_\_

Its: \_\_\_\_\_

## EXHIBIT A Scope of Services

NCPA shall perform the following Services on behalf of Contracting Members:

NCPA will enter into a contract with SCS Engineers ("Consultant") on behalf of Contracting Members to perform greenhouse gas ("GHG") verifications for Contracting Members.

### PROJECT OUTLINE

The scope of this project encompasses the verification of CARB-reported GHG emissions for eight member systems, which include the following components:

- Member systems with GHG emissions being verified under the terms of this Agreement
- Alameda Municipal Power (ARB ID 3022)
- Biggs Municipal Utilities (ARB ID 3026)
- Gridley Electric Utility (ARB ID 3035)
- Healdsburg Electric Department (ARB ID 3036)
- Lodi Electric Utility (ARB ID 3040)
- City of Lompoc (ARB ID 3041)
- Port of Oakland (ARB ID 3051)
- City of Ukiah, Electric Utilities Division (ARB ID 3065)
  
- Applicable industry sector(s)
  - Non-Multijurisdictional Retail Provider
- Greenhouse gases included in electricity retailer facility inventory
  - Fugitive emissions associated with sulfur hexafluoride (SF<sub>6</sub>) usage with electrical transformers
- Verification Frequency – Annually
- Electricity Transactions
  - Purchased/Taken from California
    - Purchased/Taken from specified sources
    - Purchased/Taken from unspecified sources
    - California total sales
- Time period
  - Calendar years 2009, 2010, and 2011

## EXHIBIT B COMPENSATION

Annual Charges invoiced by Consultant to NCPA for services provided to the Contracting Members under the CONSULTING SERVICES AGREEMENT BETWEEN THE NORTHERN CALIFORNIA POWER AGENCY AND SCS ENGINEERS, dated \_\_\_\_\_, shall be allocated to the Contracting Members in the amount of Not to Exceed Fifty Thousand Dollars (\$50,000.00) for the three year verification cost.

Compensation for all tasks will be administered on a fixed fee basis per Contracting Member. The fixed fee cost per Contracting Member for each year will be the following:

CY2009 - \$2,000

CY2010 - \$1,500

CY2011 - \$1,500

The fixed fee estimate is based on the following assumptions and scope limitations:

- Consultant assumes that a site visit to the NCPA Roseville headquarters facility can be conducted over a one-day period and that no additional site visits will be required. If the site visits are changed or additional site visits are deemed to be necessary, based on discussions with Agency, Consultant reserves the right to impose additional fees. Contracting Parties would be responsible for additional compensation owed to Consultant.
- Consultant's price includes one re-review of each annual inventory report, as needed.
- Consultant's price includes an interim verification findings log prepared for each report verified.
- Consultant's price assumes that each deliverable will go through a single round of reviews by Agency and each NCPA member participating in this Agreement.
- Consultant's scope and budget assume no site visits in calendar years 2011 and 2012.

**EXHIBIT C**  
**Insurance Maintained by NCPA**

See the attached Summaries of the following insurance coverage:

WORKERS' COMPENSATION INSURANCE	\$1,000,000
EXCESS LIABILITY INSURANCE	\$35,000,000
AUTOMOBILE INSURANCE	\$1,000,000
ERRORS & OMISSIONS INSURANCE	\$10,000,000

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